IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL No. 18 of 2006
With
CIVIL APPLICATION No. 7076 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT & 2 - Appellant(s)
Versus
INDRAVADAN BHAGVANDAS PAREKH & 12 - Defendant(s)

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Appearance :
GOVERNMENT PLEADER for Appellant(s) : 1 - 3.
MR YOGESH S LAKHANI for Defendant(s) : 1 - 6.
MR SURESH M SHAH for Defendant(s) : 1,
None for Defendant(s) : 7 - 12.
- for Defendant(s) : 13,

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 07/09/2006

ORAL JUDGMENT

1. After hearing the parties, the appeal is admitted on the following substantial question of law;

(i) Whether on the facts and in the circumstances of the case, the learned court below, instead of decreeing the suit should have remitted the matter back to the learned Secretary after setting aside the order passed by the Secretary, which according to the courts below was violating the principles of natural justice, as no notice of hearing was given to the purchasers of the property, who had purchased the property during the subsistence of an non-agricultural permission?

2. With the consent of the parties, the matter is finally heard.

3. Learned counsel for the appellants submits that if the learned courts below were of the opinion that the order

passed by the Secretary was violating the principles of natural justice, then both the courts, after setting aside the order passed by the Secretary were obliged to remit the matter to the learned Secretary for affording an opportunity of hearing to all the concerned, but the courts could not hold that the Secretary had no jurisdiction to set aside the order or could not say that the order being illegal, would not be allowed to stand absolutely.

4. Mr.Yogesh Lakhani, learned counsel for the respondents on the other hand submits that from the facts it would clearly appear that the permission for non-agricultural operation was granted on 3/6/1992, thereafter plan was submitted and thereafter revised plan was submitted on 16/10/1994. According to him, a dispute arose between Ambika Park Cooperative Society, which has 208 flats and Indraprasth Tower Society which has 104 flats and 43 shops. He submits that all flats and shops were constructed by the respondents – plaintiffs and during the subsistence of the permission for non-agricultural operation, the properties were sold in favour of more than 350 persons. He submits that the facts were within the knowledge of the Secretary and it was specifically

brought to his knowledge that during the subsistence of the permission, third party's right have crept in and under the circumstances, such persons were required to be heard. He also submits that during the pendency of the present matter, certain suits were filed and ultimately the disputes between the society and the Municipal Corporation were settled in favour of the society and under the circumstances, such facts are to be taken into consideration.

5. After hearing the learned counsel for the parties, I am of the considered opinion that the learned courts below while exercising the powers of the Civil Court, if came to the conclusion that the special authority / Secretary had no jurisdiction to decide, then it could hold that the order was null and void and in case it came to the conclusion that the order was passed after violating the principles of natural justice, then such order could be set aside with a direction to the authority to act in accordance with law and observe the principles of natural justice.

6. In the present case, undisputedly, those 350 or more persons who had acquired ownership rights in the

property, were never issued any notice, they were not given any opportunity of hearing. They claimed rights from the present plaintiffs, but in any case, they would have their individual right after becoming owners of the property. If an owner who is de-facto and de-jure owner of the property is not allowed to be heard or no notice is issued to him, then such person, if he is adversely affected, can always challenge the order. In the present case, the submission of the plaintiffs is that if permission for non-agricultural operation is set aside, the construction on the land are demolished, then the plaintiffs would be adversely suffering, because each of the purchasers would recover damages from the plaintiffs. The argument is justified and under the circumstances, it must be held that the plaintiffs had right to file the suit.

7. As those 350 or more persons were not heard by the Secretary, and the order which was passed by the Secretary was adversely affecting the right, title and interest of those persons, I must hold that the order passed by the Secretary was bad. On that short count, I must approve the judgement and decree passed by the

courts below. However, I am of the further opinion that once the court comes to the conclusion that the order was passed after violating the principles of natural justice, then the court was obliged to refer the matter back to the very same authority with a direction to issue notice to the parties and decide the matter in accordance with law.

8. The observations made by the learned courts below on the merits of the mater deserve to and are accordingly set aside. However, the decree granted by the court under which the order passed by the Secretary has been set aside, is maintained, it would be open to the Secretary to open the proceedings, but he shall be obliged to issue notice to the present appellants and to those 350 or more persons, details of whom can be supplied by the present respondents. Each person would be required to be served before the matter is heard. If the Secretary is of the opinion that those persons cannot be served individually, then he can serve those persons by publication of the notices in daily news paper which has wide circulation in the said vicinity. In case the Secretary is of the opinion that the proceedings are to be restarted,

then he shall see that the proceedings are completed and final order is passed within a period of eight months from the date he serves notices upon n the parties.

9. The appeal to the extent indicated above is allowed, but, however, with the riders aforesaid.

10. Let a decree be framed accordingly.

(R.S.GARG,J.)

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